Filed 8/20/12 In re Breanna L. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re BREANNA L. et al., Persons Coming Under the Juvenile Court Law. SACRAMENTO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, Plaintiff and Respondent, v. TIMOTHY L., Defendant and Appellant.	C067751 (Super. Ct. Nos. JD224948 & JD224949)

Timothy L. (father) appeals from a juvenile court order of legal guardianship for minors Breanna L. and Stephen L. (Welf. & Inst. Code, § 366.26.)[1] He contends the matter must be

[1] Further undesignated section references are to the Welfare and Institutions Code.

remanded due to noncompliance with the Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)). We agree and shall reverse as to ICWA only.

FACTUAL AND PROCEDURAL BACKGROUND

Given father's sole contention, we need not recite the facts in detail. Those pertinent to ICWA are set out in the Discussion.

The minors (aged 7 and 8 years old, respectively) were detained in October 2006 because of father's substance abuse problems and the inability of the stepmother, E.L., with whom they were living, to care for them. The minors' biological mother, L. G., was absent.[2]

Father claimed Iroquois heritage, and notice was sent to the federally recognized Iroquois tribes. After none responded positively within the statutory deadline, the juvenile court found ICWA did not apply.

In January 2007, the juvenile court ordered the minors placed in foster care and granted reunification services to father. His services were terminated in April 2008.

E.L., the minors' stepmother, filed an opening brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835. This court issued a partial remittitur as to her on March 9, 2012.

[2] She was living in another state. She received reunification services, but they were terminated in January 2008.

A third minor, 12-year-old M. L., was also detained. Her case was ultimately severed from that of the other minors.

Mainly due to the minors' learning disabilities and behavioral problems, the juvenile court did not adopt a permanent plan under section 366.26 until March 25, 2011. At that time, the court ordered a plan of legal guardianship with the minors' current foster parents. This appeal followed.

DISCUSSION

Father contends we must reverse and remand for further proceedings under ICWA because the tribes did not receive notice of relevant and easily available information.[3] We agree.

Background

At the detention hearing on October 19, 2006, father stated on his JV-130 form that the minors were or might be eligible for membership in the "Iroquise" [*sic*] tribe. The juvenile court ordered ICWA notice sent to the Iroquois tribes.

On October 24, 2006, Mary Lee, ICWA paralegal for Sacramento County Department of Health and Human Services (the Department), declared that as of that date, which was "the Court designated Drop Dead date for noticing," she had been unable to reach father, who was homeless, at the telephone number listed for him in the detention report, and he had not returned her call. Other attempts to obtain contact information for father had failed. Therefore, Lee had sent notice to the 11 federally recognized Iroquois tribes which consisted only of the JV-135

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[3] In his opening brief, father also contends that notice to some of the tribes was sent to the wrong persons at the wrong addresses. In his reply brief, father abandons that contention.

form ("Notice of Involuntary Child Custody Proceedings For an Indian Child") and supporting documents. This documentation contained only the parents' names, addresses (in father's case, the last known address), and birthdates, and the minors' names and birthdates.

In a declaration filed November 9, 2006, Lee stated that all the tribes had filed return receipts.

On November 14, 2006, father's counsel stated that the information contained in the JV-135 was complete and accurate.

In the jurisdiction/disposition report, filed December 4, 2006, the social worker noted that father had named his parents and his maternal grandfather, and said the grandfather was "a registered Iroquois Tribe member in Canada."

On December 12, 2006, father's counsel again verified the accuracy of the information contained in the JV-135, adding: "I reviewed it on November 14th, and it hasn't changed since then." The record does not reveal why counsel did not mention the new information father had given the social worker.

At the jurisdiction/disposition hearing on January 18, 2007, the juvenile court found that timely ICWA notice had been provided as required by law to the Iroquois tribes, 60 days had expired, and the tribes had responded negatively or had not responded. Therefore, ICWA did not apply.

Analysis

Where the juvenile court knows or has reason to know that a child involved in a dependency proceeding is an Indian child, ICWA requires that notice of the proceedings be given to any

federally recognized Indian tribe of which the child might be a member or eligible for membership. (25 U.S.C. §§ 1903(8), 1912(a); *In re Robert A.* (2007) 147 Cal.App.4th 982, 989.) Notice requirements are construed strictly. (*Ibid.*) Where notice has been given, any error in notice is subject to harmless error review. (*Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 784.)

Notice must include all of the following information, if known: the child's name, birthplace, and birth date; the name of the tribe in which the child is enrolled or may be eligible for enrollment; names and addresses of the child's parents, grandparents, great-grandparents, and other identifying information; and a copy of the dependency petition. (25 U.S.C. § 1952; § 224.2, subd. (a)(5)(A)-(D); *In re Mary G.* (2007) 151 Cal.App.4th 184, 209.) Notice which contains only the names, birth dates, and birthplaces of the minors and the parents is insufficient as a matter of law to make any determination under ICWA. (*In re D.T.* (2003) 113 Cal.App.4th 1449, 1455.)

Because the primary purpose of ICWA is to benefit the tribes, a parent does not forfeit a claim of ICWA notice violation by failing to raise it in the juvenile court. (*In re J.T.* (2007) 154 Cal.App.4th 986, 991; *Nicole K. v. Superior Court, supra,* 146 Cal.App.4th at p. 783, fn. 1; *In re Marinna J.* (2001) 90 Cal.App.4th 731, 738-739.) Therefore, we reject the Department's claim that father has forfeited the issue because he did not "timely" provide information about his family to the ICWA paralegal, or because his trial counsel did not call the

juvenile court's attention to the information father gave the social worker.

The Department asserts that there was substantial compliance with ICWA. We disagree.

ICWA notice which gives no information about the parents' ancestry is legally insufficient. (*In re D.T., supra,* 113 Cal.App.4th at p. 1455.) Because such notice fails to serve ICWA's essential purpose, it cannot constitute substantial compliance with ICWA. And here, as we have shown, information about father's ancestry missing from the ICWA notice was provided through the jurisdiction/disposition report before the juvenile court made its ICWA ruling. Once the Department had this information, its failure to request that the court order new ICWA notice was inexplicable.

Finally, the Department asserts that any error in failing to renotice the tribes was harmless because "father's claim of Indian ancestry was through a Canadian tribe; and ICWA notice is not required to non-federally-recognized tribes." This proposition, for which the Department cites no authority, fails for multiple reasons.

First, the jurisdiction/disposition report does not state that "father's claim of Indian ancestry was through a Canadian tribe": it states only that father said the maternal grandfather was a registered Iroquois tribal member "in Canada." Second, even if that statement is taken to mean that the grandfather belonged to a Canadian tribe, it still suggests that he might have had blood ties to one or more Iroquois tribes

located in the United States. Lastly, information about the child's grandparents and great-grandparents, if known, must be furnished to the tribes, even if insufficient in itself to prove the child's membership or eligibility for membership in a tribe. (25 U.S.C. § 1952; § 224.2, subd. (a)(5)(A)-(D); *In re Mary G.*, *supra*, 151 Cal.App.4th at p. 209.)

For all the above reasons, we must remand for further proceedings under ICWA.

DISPOSITION

The matter is remanded to the juvenile court with directions to vacate its order of legal guardianship for the minors and to send new notice to the Iroquois tribes, containing the additional information as to his Indian ancestry father has provided to the Department and any further information along those lines he may have. If the court finds, after the new notice has been given, that ICWA has been complied with and does not apply, the court shall reinstate its order of legal guardianship. If the court finds that ICWA applies, it shall proceed in accordance with ICWA.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

HOCH, J.